

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

)	
)	CC Docket No 02-6
In the Matter of)	
)	WC Docket No. 10-90
Schools and Libraries Universal)	
Service Support Mechanism)	WC Docket No. 13-184
)	

REPLY COMMENTS ON PETITIONS

REGARDING OFF-CAMPUS USE OF EXISTING E-RATE SUPPORTED CONNECTIVITY

The West Virginia Department of Education supports the Microsoft and Boulder Valley School District (BVSD) filing and encourages the FCC to consider opening the access of the existing state network in West Virginia to permit off-campus utilization of Internet access services. While our K-12 public schools are connected to fiber at 100 percent, West Virginia is an extremely rural state that is lacking in home access for students in their communities and supports the petitions from Microsoft and BVSD requesting to expand the 2010 Community School Spots Waiver, originally requested by the West Virginia Department of Education.

Pursuant to 47 C.F.R. § 1.3 of the Commission's Rules, the West Virginia Department of Education (WVDE) respectfully requests a waiver of the Commission's rule 47 C.F.R. § 54.504(e) to permit school districts to provide off-site and home Internet access without requiring cost allocation of the district transport costs or the WVDE's Internet Access. This request is appropriate as the special

circumstances laid out within our request require deviation from this rule and said deviation will serve the public interest. Section III notes that the Wireline Competition Bureau (Bureau) may address this request on delegated authority pursuant to 47 C.F.R. § 0.291.¹

47 C.F.R. § 1.3 of Commission's rules provides that the Commission may waive its rules "if good cause therefore is shown." Generally, a waiver is appropriate if "(i) special circumstances warrant deviation from the general rule; and (ii) such deviation will serve the public interest."² We believe that just cause exists to waive this rule. The rules states that "For purposes of this subpart, activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate and proximate to the provision of library services to library patrons, qualify as 'educational purposes.' Activities that occur on library or school property are presumed to be integral, immediate, and proximate to the education of students or the provision of library services to library patrons."

The Commission previously granted a waiver with respect to § 54.504 where such required conditions were met. In 2001, the Commission granted the State of Alaska waiver from provisions of § 54.504 to allow communities in rural Alaskan to use E-rate funded networks at home where no local connectivity was present and where no additional costs would be required.³ We do request that the waiver granted would not stipulate that only remote, rural areas may be provided services

¹ All references to the "Commission" refer to the Wireline Competition Bureau on authority delegated by the Commission.

² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

³ See Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling, Order, CC Docket No. 96-45, 16 FCC Red. 21,511 (Dec. 3, 2001) (Alaska Order).

as this program would further the Commission's goal of Internet adoption.⁴

Additionally, the Joint Board Recommended Decision Order stated, "that the Commission [would] provide discounts for Internet access pursuant to section 254(h)(2). This discount would apply to basic conduit, i.e., non-content, access from the school or library to the backbone Internet network. This access would include the communications link to the ISP, whether through dial-up access or via a leased line, and the subscription fee paid to the ISP, if applicable."⁵ Furthermore, it stated that "Internet access should be defined as basic conduit, i.e., non-content access from the school or library to the backbone Internet network, which would include the communications link to the Internet service provider, whether through dial-up access or via a leased line, the links to other Internet sites via the Internet backbone, generally provided by an Internet service provider for a monthly subscription fee, if applicable, and electronic mail."⁶

The West Virginia Department of Education believes that a waiver, as explained below, would be in the best interest of the public and foster the educational process for all students in West Virginia, as well as aiding the FCC's goal of meeting recommendation 11.23⁷ of the National Broadband plan utilizing already existing bandwidth services without creating a greater burden to the fund.

⁴ Id. at ¶¶ 9-11.

⁵ Federal Communications Commission, Joint Board, *Recommended Decision Order*, 1996, (233).
http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/decision.pdf

⁶ Federal Communications Commission, Joint Board, *Recommended Decision Order*, 1996, (323).
http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/decision.pdf

⁷ Federal Communications Commission, *Connecting America: The National Broadband Plan*, 2010, (257).
<http://download.broadband.gov/plan/national-broadband-plan-chapter-11-education.pdf>

“Online learning can occur anytime, anywhere. Research shows that home use of computers and broadband technologies for learning can be a significant factor in boosting math and reading achievement.”⁸ “Use of computers and broadband at home for educational purposes has also been shown to motivate students and to increase the relevance of content during school hours—ultimately improving student achievement.”⁹

The FCC cited in its 2010 Broadband Report that “E-rate should support online learning by providing wireless connectivity to portable learning devices so students can engage in learning while not at school. Restricting student access to network services while on school grounds is becoming increasingly indefensible given the new educational opportunities presented by cloud-based desktops, smartphones, tablet PCs, netbooks and other highly portable solutions. Demand for wireless services in education is rapidly growing, and students without off-campus access to online educational services will be increasingly left behind in terms of skills, experience and confidence in their online capabilities.”¹⁰ The fact is, that E-rate should be serving students over all else instead of just the buildings. Permitting the access to the district and state networks so that the exact same student population can utilize the network for anytime, anywhere instruction and educational work

⁸ Texas Center for Education Research, Evaluation of the Texas Technology Immersion Pilot: Final Outcomes for a Four-Year Study (2004–05 to 2007–08), at vi–vii (2009), http://www.etxtip.info/y4_etxtip_final.pdf.

⁹ Gill Valentine et al., Children and Young People's Home Use of ICT for Educ. Purposes: The Impact on Attainment at Key Stages 1–4, at 8–9 (2005), available at <http://www.dcsf.gov.uk/research/data/uploadfiles/RR672.pdf>; Mizuko Ito et al., Living and Learning with New Media Summary of Findings from the Digital Youth Project 1–3 (2008), available at <http://digitalyouth.ischool.berkeley.edu/files/report/digitalyouth-WhitePaper.pdf>; Don Passey et al., The Motivational Effect of ICT on Pupils 3 (2004), available at <http://www.dcsf.gov.uk/research/data/uploadfiles/RR523new.pdf>; Becta, Minister's Taskforce on Home Access to Tech., Extending Opportunity 4 (2008), available at http://partners.becta.org.uk/upload-dir/downloads/page_documents/partners/home_access_report.pdf.

¹⁰ Federal Communications Commission, *Connecting America: The National Broadband Plan*, 2010, (257). <http://download.broadband.gov/plan/national-broadband-plan-chapter-11-education.pdf>

just makes sense.

In Funding Year 2015, the WVDE was approved for over \$3.8 million in E-rate discounts on Internet access bandwidth for over 900 public school entities. In addition to the state applications, each county applies for E-rate discounts on telecommunications data circuits that connect to the statewide K-12 network. These discounts have provided the high-speed telecommunications lines necessary for the over 900 entities and 284,000 students and over 30,000 teachers and staff to access online instructional resources and e-mail.

Our plan is to utilize that bandwidth in a most fiscally responsible manner that will not only provide more services to students, but also better utilize the bandwidth during off hours and weekends. The services provided are ancillary in nature since they do not require additional funding due to increased utilization for services that are already in place and sit unused during the mornings before and evenings after school and summertime. In our case, the existing circuits would be leveraged to push out bandwidth from the two state network Points of Presence in the north and south, to each school district, down to each school, and then wirelessly broadcast to the district owned school buses for utilization during transportation routes and then after-hours for student access where buses will be parked and broadcasting connectivity only to student and staff devices. Currently, Kanawha County Schools has installed wireless routers in their 158 school buses to provide services to students to and from school and education-related events. Additionally, the district brings the buses to the communities to permit students to complete their college Free Application for Federal Student Aid (FAFSA) with assistance from employees while on the bus. The WV Department of Education is currently cost-allocating the utilization of the off-site use of the bandwidth that

connects to the statewide K-12 network for filtering and Internet access. The current utilization of all 61 school buses in our largest county in the state is at most less than 0.5% of the entire network utilization all day. This utilization does not require any additional bandwidth beyond what the school district and West Virginia Department of Education currently subscribes and subscribed to prior to the implementation of this project.

A waiver of the rule would further the public interest by ensuring that West Virginia applicants receive the full value from Internet access services paid for, in part, by E-rate funding by permitting the WVDE stop cost allocating funding for this and any other off-site use to students. In fact, the current cost-allocation is less than 0.00015 percent of the WVDE's bandwidth utilization. Since the E-rate currently funds the Internet bandwidth application at an 81 percent discount for Funding Year 2016. WVDE pays the remaining 19 percent--funds that aren't even paid by the E-rate program that could currently account and cover this cost-allocation. We believe that, if nothing else, applicants should be able to utilize the portion of the share they pay in whatever way they like since no E-rate funding has been provided for that amount. Thus, we believe that cost-allocation on our services should cease and this ancillary use of network bandwidth that costs no additional fees, is utilized by the same student population that utilizes it during school hours and is serving the public good should be permitted without future cost-allocations. In this way, this allowance would have no additional cost to the Universal Service Fund and no impact to the West Virginia Department of Education.

Currently, the E-rate rules presume that services used on school premises are serving an

educational purpose.¹¹ The E-rate program also currently supports wireless Internet access on school grounds.¹² However, historically, this connectivity has been limited to the school campus with the exception of the Learning on the Go (EDU2011) pilot.¹³ At the time, this pilot was intended to investigate the potential for expanding the E-rate program for home access of students.

Current rules still maintain that any off-site utilization must be cost-allocated from the applicant's E-rate application.¹⁴ With this model, the same bandwidth that is left behind at the school, in most cases, would continue to be available for the same students and staff to encourage anytime-anywhere learning and extend the classroom. Another historic order that the West Virginia Department of Education worked to bring forth allowed students at schools where they were required to remain in dormitories, like our West Virginia School for the Deaf and Blind, to obtain access to the dormitory, another formerly ineligible service. We argued that our students did not have the luxury of having a parent to transport them to the public library or local eating establishment for Wi-Fi. The FCC brought forth a waiver of that rule as part of the *Sixth Report and Order*¹⁵ and set into motion a game-changing order that now allows these students to complete homework and research well beyond the school bell. In that same vein, especially within rural West Virginia, our students face the challenges of not having afterschool access to transportation to visit

¹¹ 47 C.F.R. § 54.500(b). But see supra n. 90 (identifying specific exceptions for offsite cost allocation).

¹² See Funding Year 2014 ESL at page 5.

¹³ Federal Communications Commission, *Sixth Report and Order*, 2010, (22, section 5, para 41-50).

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-175A1.pdf

¹⁴ See USAC website, Schools and Libraries, Cost Allocation Guidelines for Products and Services, available at <http://www.usac.org/sl/applicants/step06/cost-allocation-guidelines-products-services.aspx> (last visited Sept. 14, 2010); see also Funding Year 2014 ESL at 24 (homes or other non-school or non-library sites are provided as examples of ineligible locations) and 5 (explanation of cost allocation).

¹⁵ Federal Communications Commission, *Sixth Report and Order*, 2010, (16-18).

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-175A1.pdf

the library. These students would be afforded the opportunity to have learning become ubiquitous through this Community Bus Hotspots waiver opportunity.

We believe it would be ideal to expand funding to permit the broadcast hardware and monthly recurring costs for the cellular services that support connectivity to the state network, required in order to meet this goal via existing means and thereby avoiding duplication of services. We believe this waiver should not be limited by technology as new technologies expand at a constant rate. By remaining technology neutral, this will afford us the ability to shift to potentially provide new avenues at a lower cost.

West Virginia further requests, at a minimum, a pilot proposal to permit a study of the impact and costs associated with this equipment utilizing a currently active bus Wi-Fi project in Kanawha County Schools. At this time, we request that West Virginia be permitted to provide access to the E-rated connectivity services for use offsite for students and staff in all districts in West Virginia and Kanawha County be permitted to apply for discounts on the monthly recurring cellular costs that connect these buses to the state network, in whole or in part. West Virginia school districts are already launching programs to enable students to have untethered access to their content and materials and are ever-increasing 1:1 device programs. West Virginia currently has statewide access to electronic files, video or audio conferencing with teachers, cloud storage and chat from teachers to students from any location. In permitting this access, the FCC will permit students to expand their learning and ensure students who are participating in sporting events and field trips are able to continue their studies and complete homework, as well as students who are on school buses before and after school.

In the July 2013 Notice for Proposed Rulemaking, the FCC inquired regarding Wireless Community Hotspots in order to extend the reach of E-rate supported services. While we agreed with the prospect of our students having greater access to services already funded by E-rate, matched with our state and district funds, our concern was that students' connectivity would be impacted by the community at-large intercepting bandwidth in the process. In the comments filed by West Virginia State E-rate coordinator¹⁶, we expressed our concerns and reservations about opening our bandwidth up to the general public due to the concerns for the safety of the network, impact on school bandwidth, costs for additional equipment required and the costs for staffing to support the community's use of the service. Additionally, allowing access to unknown users who may potentially limit bandwidth available for our students was of utmost concern.

We also recommended that this FCC proposal be limited to a pilot project in order to study the impact and best way to implement. In 2010, the West Virginia State E-rate Coordinator encouraged the Commission to extend the use of the school network in order to allow the formerly underutilized evenings, weekends and holidays' bandwidth to be accessed by the community.¹⁷ Through our proposed plan, we would take the FCC's broadband plan to the next level and further

¹⁶ West Virginia Department of Education, Julia Benincosa Legg, *Initial Comments By The West Virginia Department Of Education Related To The E-Rate Notice Of Proposed Rulemaking*, September 16, 2013, (118-120). <http://apps.fcc.gov/ecfs/document/view?id=7520943995>; See also West Virginia Department of Education, Julia Benincosa Legg, *Reply Comments By The West Virginia Department Of Education Related To The E-Rate Notice Of Proposed Rulemaking*, November 8, 2013, (6-7). <http://apps.fcc.gov/ecfs/document/view?id=7520957148>

¹⁷ See Letter from Julia Benincosa, West Virginia Department of Education, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Aug. 2, 2010).

close the existing broadband availability gap for our students, while limiting connectivity to student devices.

West Virginia believes that we have the proposal that will fulfill the next generation vision for this project that began with working with the FCC in order to allow greater access and utilization of E-rated funds to the community through the Community Spots Waiver that was formalized in the *Schools and Libraries Sixth Report and Order* and expand it to include Community Bus Hotspots.¹⁸ This new proposal will bring to fruition the next logical step, which is removing the barrier of access to the Internet for student learning after the school bell rings.

Services would still remain filtered since our state network filtering occurs at our point of presence. This service is currently being cost-allocated from E-rated services. In this way, access will not be limited to school hours or physical space. Students could complete homework assignments while traveling to sporting events in the evenings, afterschool on their way home or by connecting to a bus hot spot. We believe that it is essential to encourage lifelong learning and that learning doesn't end at the classroom doorway at the end of the day. This opportunity will afford all students and staff to make learning more student-centered and expand learning beyond the classroom. The concern for additional demand on the network during the school day would be tied to a unique connection to each student. We request that the FCC grant this Community Bus Hotspots waiver so that we would no longer be required to cost-allocate for this off-site use to any school district that

¹⁸ Federal Communications Commission, *Sixth Report and Order*, 2010, (12-16).
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-175A1.pdf

is currently or will participate in this service in the future.

Conclusion

In order for the West Virginia Department of Education to better serve the community with state and federal funding and for students to benefit from and leverage already existing services, the WVDE requests that this rule limiting access to Internet and telecommunications services funded by E-rate to the school district sites, be waived for all West Virginia applicants in order to provide wireless Internet services to the homes of staff and students. Good cause exists for waiving the rule limiting home access in order to meet existing broadband plan goals, utilize currently unutilized bandwidth during hours schools are not in session. This proposal will ensure that West Virginia schools receive the full benefit of the E-rate funding and increase opportunities for 24/7 learning. We believe that the granting of this Community Bus Hotspots waiver request will afford the benefit of ensuring that the millions of dollars in discounts received by West Virginia are utilized to the utmost degree and keeps the access provided focused on those recipients targeted within the E-rate program. We are open and welcome to questions or concerns that may arise as a result of this filing and welcome you to discuss with us at your convenience.

Respectfully submitted,

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